

## **CHAPTER 3**

### **CONTROVERSIES AND DISPUTES**

#### **SUBCHAPTER 1. GENERAL PROVISIONS**

##### **6A:3-1.1 Purpose and scope**

(a) This chapter sets forth the rules of procedure established by the Department of Education for the filing of petitions with the Commissioner of Education to hear and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9.

(b) This chapter also establishes special rules of procedure for specific types of controversies in accordance with the requirements of the following statutes:

1. The filing of tenure charges pursuant to N.J.S.A. 18A:6-10 through 18A:6-17;
2. Termination of sending-receiving relationships pursuant to N.J.S.A. 18A:38-13;
3. Appeals from decisions of the New Jersey State Interscholastic Athletic Association pursuant to N.J.S.A. 18A:11-3;
4. Denials of entitlement to attend school pursuant to N.J.S.A. 18A:38-1; and
5. Review of penalties recommended by the School Ethics Commission pursuant to N.J.S.A. 18A:12-29.

(c) In accordance with N.J.S.A. 18A:7F-5e(3), this chapter shall not apply to district boards of education seeking restoration of budget reductions by governing bodies or boards of school estimate. Such restorations shall be sought pursuant to the provisions of N.J.A.C. 6A:23-8.10.

##### **6A:3-1.2 Definitions**

The words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

“ALJ” means an administrative law judge assigned by the Director of the Office of Administrative Law to preside over contested cases pursuant to N.J.S.A. 52:14F.

“Commissioner” means the Commissioner of Education or a designated Assistant Commissioner to whom the Commissioner has delegated the authority to hear and decide a controversy or dispute pursuant to N.J.S.A. 18A:4-33 and 18A:4-34.

“Contested case” means an adversarial proceeding in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required to be adjudicated by the Commissioner after opportunity for agency hearing pursuant to N.J.S.A. 18A:6-9, N.J.S.A. 52:14B (Administrative Procedure Act) and N.J.A.C. 1:1 (New Jersey Uniform Administrative Procedure Rules).

“Day” means business day when the period specified is less than seven days, and calendar day when the period specified is seven days or more; provided, however, that calculations do not include the day of the action from which they are computed but do include the last day of the period being computed unless such day falls on a Saturday, Sunday or holiday, in which case the last day shall be deemed the next business day immediately following.

“Department” means the New Jersey State Department of Education.

“District board of education” means the board of education of a local or regional school district, a county special services school district or a county vocational school district, or the

State district superintendent of a State-operated school district, the board of directors of an educational services commission or jointure commission, or the board of trustees of a charter school.

“Filing” means receipt of an original paper by an appropriate officer of the Department. Filings may be made by facsimile when they otherwise conform to requirements for submission and are accompanied by a statement that the original document and requisite copies will follow by mail or hand delivery.

“Indispensable party” means a person(s) without whose inclusion a matter cannot proceed or an adequate judgment cannot be entered.

“Interested person(s)” means a person(s) who will be substantially, specifically and directly affected by the outcome of a controversy before the Commissioner.

“OAL” means the Office of Administrative Law established pursuant to N.J.S.A. 52:14F.

“Proof of service” means the provision of proof, pursuant to N.J.A.C. 6A:3-1.3(h), of the delivery of a paper by mail or in person to a party, person or entity to whom or to which papers are required to be transmitted.

“Pro se” means a person who acts on his or her own behalf without an attorney or other nonlawyer representative as permitted by rules of the OAL.

“Representative” means an attorney or other person as permitted by the rules of the OAL appearing on behalf of a party in proceedings governed by this chapter.

“Rules of the OAL” means the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

### **6A:3-1.3 Filing and service of petition of appeal**

(a) To initiate a contested case for the Commissioner’s determination of a controversy or dispute arising under the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements of N.J.A.C. 6A:3-1.4 and serve such petition upon each respondent, together with any supporting papers the petitioner may include with the petition. The petitioner then shall file proof of service on each respondent, the telephone numbers (and fax numbers where available) of the petitioner and each respondent, and the original and two copies of the petition and supporting materials, if any, with the Commissioner c/o the Director, Bureau of Controversies and Disputes, New Jersey State Department of Education, 100 River View Plaza, P.O. Box 500, Trenton, New Jersey 08625-0500. In no case shall a petitioner submit materials to the Commissioner which have not been served upon each respondent.

1. Any petition filed jointly by three or more petitioners, where the petitioners are pro se, shall designate one petitioner as a representative of the group for purposes of receipt of service for answer(s), initial correspondence, pretransmittal notices and other communications prior to the agency’s determination that the matter is a contested case. In subsequent proceedings, however, if petitioners are acting as a group, the group shall comply with applicable rules of the OAL regarding representation.

2. A petition on behalf of a minor shall be filed by the parent or legal guardian of the minor. Once such a petition is filed, the matter shall be subsequently identified by the initials of petitioner(s) and the child(ren).

3. A petitioner shall notify the Bureau of Controversies and Disputes of any change in address or telephone number prior to transmittal of a matter to the OAL.

(b) A petitioner shall name as a party any person or entity indispensable to the hearing of a contested case. Failure to name an indispensable party may be grounds for dismissal of the petition pursuant to N.J.A.C. 6A:3-1.10.

1. In the case of petitions by unsuccessful bidders challenging an award of bid by a board of education under the Public School Contracts Law (N.J.S.A. 18A:18A), the successful bidder shall be named as a respondent.

(c) A petitioner claiming benefits under N.J.S.A. 18A:30-2.1 shall include a copy of the ruling or settlement agreement issued by the Division of Workers' Compensation with respect to the injury underlying the claim or provide reasons why the matter constitutes an exception to the requirement that the Commissioner refrain from exercising jurisdiction until the Division makes a determination of work-related injury.

(d) A petitioner claiming that his or her employment was nonrenewed for reasons that are statutorily or constitutionally proscribed shall set forth in the petition at least a minimal factual basis for such allegation(s), consistent with New Jersey Court Rules at R.4:5-2.

(e) Where a petition is filed by or on behalf of a student who is, or who may be as a result of a pending evaluation, subject to the provisions of an individualized education program (IEP) or an accommodation plan pursuant to Section 504 of the Rehabilitation Act, the petition shall so indicate. The petition shall further indicate whether the matter has been concurrently filed with the Department's Office of Special Education Programs (OSEP).

1. If a petition appears to raise, in addition to issues within scope of the Commissioner's authority, issues requiring a determination under State statutes or rules governing special education, the Individuals with Disabilities Education Act (IDEA), or Section 504 of the Rehabilitation Act, and the petition has not been concurrently filed with the OSEP, it will be docketed by the Bureau of Controversies and Disputes in accordance with this chapter and also forwarded to OSEP for docketing as a special education matter pursuant to N.J.A.C. 6A:14-2.7. The two offices shall concurrently transmit the matter to the OAL with a request that the OAL initially docket and review the matter as a special education (EDS) case and issue a final decision pursuant to N.J.A.C. 6A:14-2.7, except that if the ALJ finds that some or all of the issues raised are within the authority of the Commissioner, the OAL shall additionally or instead, as the case may be, docket the matter as an education (EDU) case and the ALJ shall render an initial decision on such issues as are within the authority of the Commissioner and forward it to the Commissioner for agency review pursuant to applicable rules of the OAL.

2. If a petition appears solely to raise issues requiring a determination under State statutes or rules governing special education, the Individuals with Disabilities Education Act (IDEA), or Section 504 of the Rehabilitation Act, it may, after notice to the parties and opportunity to be heard, be transferred to the OSEP in accordance with the provisions of N.J.A.C. 6A:3-1.10(b).

(f) Where a matter is transferred to the Commissioner by a court, it shall be the responsibility of the parties to ensure that the order of transfer, pleadings and any other pertinent papers are forwarded to the Commissioner, c/o the Director, Bureau of Controversies and Disputes, New Jersey State Department of Education, 100 River View Plaza, P.O. Box 500, Trenton, New Jersey 08625-0500, either by the court or by the parties themselves. Where the documents filed do not sufficiently conform to the requirements of this section and N.J.A.C. 6A:3-1.4, the complainant(s) will be asked to re-submit the matter to the Commissioner in the

form of a duly conformed Petition of Appeal, to which the respondent(s) will then be directed to file an answer in accordance with N.J.A.C. 6A:3-1.5.

(g) Consistent with the provisions of N.J.A.C. 1:10A-14, where a petition, or tenure charge pursuant to N.J.A.C. 6A:3-5, is filed in a matter involving allegations of child abuse and neglect reported to or investigated by the Division of Youth and Family Services (DYFS), the record of the matter shall be sealed to the extent necessary, pending further action by the ALJ to whom a matter is subsequently assigned at the OAL, to protect all DYFS records and reports regarding such abuse and neglect.

1. The final agency decision in any dispute as to the confidentiality of records or reports of child abuse or neglect shall be made by DYFS in accordance with N.J.S.A. 9:6-8.10a and N.J.A.C. 10:133G.

(h) Proof of service shall be in the form of one of the following:

1. An acknowledgement of service signed by the attorney or the attorney's designee for each respondent, or signed and acknowledged by the respondent or agent thereof, indicating the address at which each respondent was served;

2. An affidavit of the person making service, sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation, indicating the address at which each respondent was served;

3. A certification indicating the address at which each respondent was served and meeting the requirements of New Jersey Court Rules at R.1:4-4(b); or

4. A copy of petitioner's receipt for certified mailing or delivery by messenger to each respondent. The return receipt card ("green card") is not required for proof of service by certified mailing.

(i) The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

1. Any petitioner claiming benefits under N.J.S.A. 18A:30-2.1 shall file a petition within 90 days of the date of the determination by the Division of Workers' Compensation that either finds the employee to have sustained a compensable injury or settles the compensation claim without a determination of work-related causation, unless the claim constitutes an exception to the requirement that the Commissioner refrain from exercising jurisdiction until the Division has made a determination on the underlying injury, in which case the petition must be filed within 90 days of receipt of notice of the district board of education's action, or of the action of the district board of education's agent, which has the effect of denying such benefits.

(j) When the State of New Jersey Department of Education or one of its agents, or the State Board of Examiners or other entity located within the Department, is named as a party, proof of service to the Attorney General of the State of New Jersey is required. A petitioner shall direct such service to Department of Law and Public Safety, Division of Law, P.O. Box 112, Trenton, New Jersey 08625-0112, Attention: Education Section. When another agency of the State of New Jersey is named as a party, service on the Attorney General is also required, and a petitioner shall effect service as set forth in this section, but to the attention of the appropriate section of the Division of Law.

### 6A:3-1.4 Format of petition of appeal

(a) A petition shall include the name and address of each petitioner; the name and address of each party respondent; a statement of the specific allegation(s) and essential facts supporting them which have given rise to a dispute under the school laws; the relief petitioner is seeking; and a notarized statement of verification or certification in lieu of affidavit for each petitioner. The petition should also cite, if known to petitioner, the section or sections of the school laws under which the controversy has arisen. A petition should be presented in substantially the following form:

(NAME OF PETITIONER(S)), : BEFORE THE COMMISSIONER  
PETITIONER(S), : OF EDUCATION OF NEW JERSEY

V.

(NAME OF RESPONDENT(S)), : PETITION  
RESPONDENT(S). :

Petitioner, \_\_\_\_\_, residing at \_\_\_\_\_, hereby requests the Commissioner of Education to consider a controversy which has arisen between petitioner and respondent whose address is \_\_\_\_\_, pursuant to the authority of the Commissioner to hear and determine controversies under the school law (N.J.S.A. 18A:6-9), by reason of the following facts:

1. (Here set forth in as many itemized paragraphs as are necessary the specific allegation(s), and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner requests that (here set forth the relief desired).

\_\_\_\_\_  
Signature of petitioner or representative  
Date \_\_\_\_\_

(Name of petitioner), of full age, being duly sworn upon his or her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.
2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of petitioner

Sworn and subscribed to before me this  
\_\_\_\_\_ day of \_\_\_\_\_ (month) , (year) \_\_\_\_\_

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(Signature of Notary Public or other person  
authorized to administer an oath or affirmation)

(b) A petition submitted by a pro se petitioner that substantially includes the requisite information as set forth in (a) above shall be accepted for filing notwithstanding that the petition does not conform to the prescribed technical format, and such petitioner shall be notified of any material deficiencies which shall be remedied before the matter can proceed. However, where a petition does not meet minimal standards regarding parties, allegations or relief sought, it may be returned to the petitioner without being filed.

1. Any submission returned to a petitioner pursuant to this subsection shall be accompanied by a letter noting the date of the submission's receipt and identifying the deficiencies deemed to constitute substantial noncompliance.

(c) Any party to a controversy or dispute before the Commissioner, who is a party to another action before any other administrative agency, arbitration proceeding or court involving the same or similar issue of fact or law, shall indicate the existence of such action or complaint within the petition of appeal or the answer to the Commissioner, as may be appropriate. Failure to so certify may be deemed to be sufficient cause for dismissal of the petition of appeal when, in the judgment of the Commissioner and/or the ALJ, such failure results in the duplication of administrative procedures for the resolution of a controversy or dispute.

(d) Whenever such duplicate filing is discovered, and after the filing of the answer by the respondent, the case will be transmitted to the OAL for initial determination of which agency, if any, has the predominant interest in the outcome of the case.

### **6A:3-1.5 Filing and service of answer**

(a) The respondent(s) shall serve an answer upon the petitioner within 20 days after receipt of the petition, unless a shorter period is required by statute, regulation or court order or directed by the Commissioner due to the emergent nature of a matter. The answer shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegation(s) of the petition.

1. A respondent shall notify the Bureau of Controversies and Disputes of any change in address or telephone number prior to transmittal of a matter to the OAL.

(b) Respondent(s) may not generally deny all the allegations, but shall make specific denials which meet the substance of designated allegations or paragraphs of the petition.

(c) The Commissioner shall deem an affirmative defense to an allegation as also a denial of that allegation.

(d) The original and two copies of the answer, and of any supporting papers the respondent includes, shall be filed with the Commissioner, together with proof of service of a copy thereof upon petitioner. In no case shall a respondent submit materials to the Commissioner which have not been served upon the petitioner and other parties.

(e) Failure to answer within the 20-day period from receipt of service shall result in a notice to the respondent informing the respondent that unless an answer is filed within 10 days of the

receipt of said notice, each count in the petition of appeal shall be deemed admitted and the Commissioner may decide the matter on a summary basis.

(f) Upon written application by a party, the Commissioner may extend the time for answer; provided that the application was received by the Commissioner prior to the expiration of the initial 20-day period, and provided that a copy of the application was served upon all parties to the contested case.

1. Applicants for extensions are encouraged to secure the consent of the other parties, and where consent has been obtained prior to application to the Commissioner, the application shall so state. Any reasonable request for extension shall be granted when all parties consent. Requests for extensions which are opposed by one or more of the parties may be granted upon a finding of good cause shown.

(g) Nothing in this section precludes the filing of a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on such motions shall be in the manner and within the time fixed by the Commissioner.

1. Any papers filed in conjunction with such a motion shall be submitted in original form with two copies.

(h) The provision of subsection (a) above allowing 20 days within which to file an answer, and the provisions of subsections (e) and (f) above in their entirety, shall not apply to answers filed to tenure charges pursuant to N.J.A.C. 6A:3-5.3.

#### **6A:3-1.6 Interim relief or stay**

(a) Where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case.

(b) A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
  2. The legal right underlying petitioner's claim is settled;
  3. The petitioner has a likelihood of prevailing on the merits of the underlying claim;
- and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

(c) Any party opposing such motion shall so indicate as part of the answer to the petition filed pursuant to N.J.A.C. 6A:3-1.5. However, upon review, the Commissioner may:

1. Act upon such motion prior to the filing of an answer, provided a reasonable effort is made to give the opposing party an opportunity to be heard;
2. Act upon such motion upon receipt of the answer; or
3. Transmit the motion to the OAL for immediate hearing on the motion.

(d) The Commissioner may decide a motion for interim relief or stay prior to any transmittal of the underlying matter to the OAL for hearing. Once a matter has been transmitted, any subsequent motion for emergent relief shall be filed with the Commissioner who shall forward the motion for determination by the OAL in accordance with applicable rules of the OAL.

1. Where a matter has already been transmitted to the OAL, at the same time the motion is filed with the Commissioner, a copy of the motion and supporting memorandum or brief shall concurrently be filed with the OAL Clerk and the assigned ALJ, if known.

(e) All papers submitted in conjunction with a motion for interim relief or stay shall be in original form with two copies.

#### **6A:3-1.7 Amendment of petition and answer**

(a) Prior to the transmittal of any matter to the OAL, the Commissioner may order the amendment of any petition or answer, or any petitioner may amend the petition, and any respondent may amend the answer; provided, however, that once an answer or other responsive pleading is filed, an amendment to a petition may be made only with the consent of each adverse party or by leave of the Commissioner upon written application.

1. Any amendment or application to amend shall be submitted in original form with two copies.

(b) Following transmittal to the OAL, motions to amend a petition or answer shall be filed with and determined by the OAL in accordance with applicable rules of the OAL.

#### **6A:3-1.8 Permission to intervene or participate**

(a) Prior to any transmittal to the OAL, requests for intervention or participation in a contested case shall be addressed to the Commissioner. Upon transmittal, requests shall be made to the OAL.

(b) Such requests, whether decided by the Commissioner or by the OAL, shall be reviewed in accordance with the standards set forth in applicable rules of the OAL.

1. Any request for intervention or participation shall be submitted in original form with two copies.

#### **6A:3-1.9 Appearance and representation**

(a) Any person may appear pro se or may be represented by an attorney at law admitted and authorized to practice in this State or by such other person as set forth in applicable rules of the OAL.

(b) Once a matter has been deemed contested, a district board of education shall be represented by an attorney in accordance with applicable rules of the OAL.

1. Certain corporations other than district boards of education may be represented by non-lawyer representatives in accordance with applicable rules of the OAL.

#### **6A:3-1.10 Dismissal or transfer of petition**

(a) At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.



(b) If a petition is filed with the Bureau of Controversies and Disputes which appears, because of the nature of its allegations, to be more properly filed with another office in the Department, or with the Division on Civil Rights, the Bureau Director may confer with appropriate staff in such office or division and, upon agreement that the matter should properly be before such office or division and notice to the parties with opportunity to be heard, transfer the petition without docketing it as a school law dispute before the Commissioner. In all such cases, notice of the transfer shall be promptly provided to the parties, and such notice shall include the date the petition was filed with the bureau.

#### **6A:3-1.11 Hearing**

Upon the filing of the petition and answer(s) in a contested case, where the Commissioner does not determine to dismiss the matter pursuant to N.J.A.C. 6A:3-1.10(a), the Commissioner may either retain the matter for hearing directly and individually, designate an Assistant Commissioner to hear and decide the matter pursuant to N.J.S.A 18A:4-33 and 18A:4-34, or transmit the matter for hearing before the OAL. All hearings, whether a matter is retained by the Commissioner, delegated to an Assistant Commissioner or transmitted to the OAL, shall be conducted in accordance with the rules of the OAL. If the Commissioner retains a matter for hearing directly or through a designee, the matter may, in the Commissioner or designee's discretion, be decided summarily where the record so permits.

#### **6A:3-1.12 Summary decision**

(a) At any time concurrent with or subsequent to the filing of an answer, but prior to transmittal of a matter to the OAL, any party may move before the Commissioner for summary decision. The Commissioner may decide the motion directly or transmit it to the OAL for disposition.

1. All papers filed in conjunction with motions for summary decision shall be submitted in original form with two copies together with proof of service on each other party.

(b) Applications for summary decision after a matter has been transmitted to the OAL shall be filed with the ALJ in accordance with applicable rules of the OAL.

#### **6A:3-1.13 Settlement or withdrawal of contested matter**

(a) Prior to transmittal to the OAL, a petitioner may withdraw a petition at any time. Upon such withdrawal, the Commissioner shall discontinue all proceedings and notify all parties accordingly. Following transmittal to OAL, a petitioner may request withdrawal in accordance with applicable rules of the OAL.

(b) Prior to transmittal to the OAL, parties to a contested matter may notify the Commissioner of settlement at any time.

1. Where settlement occurs prior to the filing of an answer, the matter shall be deemed withdrawn pursuant to (a) above.

2. Where settlement occurs subsequent to the filing of an answer, the parties shall set forth the full settlement terms for review and approval by the Commissioner.

(c) Following transmittal of a matter to the OAL, parties shall effectuate settlement in accordance with applicable rules of the OAL.

(d) Where the district board of education is a party to a contested matter, any proposed settlement, whether submitted to the Commissioner or to the OAL, shall indicate, by signature of the board attorney or inclusion of a district board of education resolution authorizing settlement, that the district board of education has consented to the terms of the settlement.

(e) A proposed settlement, whether submitted to the Commissioner or to the OAL, shall not include terms restricting access to records or information deemed public by law, nor shall it include terms requiring disclosure of information protected from such disclosure by law.

(f) The provisions of this section shall not apply to settlement and withdrawal of tenure matters, which are governed by N.J.A.C. 6A:3-5.6.

#### **6A:3-1.14 Written decision**

(a) Every determination of a controversy or dispute arising under the school law, or of charges against a district board of education employee or an employee of a State agency who is accorded tenure under the school law, with the exception of employees of charter schools, shall be made by the Commissioner. Every such determination shall be embodied in a written decision which shall set forth findings of fact, conclusions of law and an appropriate order pursuant to applicable rules of the OAL.

(b) Any determination or decision of the Commissioner is appealable to the State Board of Education, except where otherwise provided by law; however, any decision of the Commissioner shall be binding unless and until reversed on appeal or a stay is granted by the Commissioner, the State Board or a court.

(c) A Commissioner's decision shall be deemed filed three days after the date of mailing to the parties.

#### **6A:3-1.15 Motion for stay, reconsideration or clarification of Commissioner's decision**

(a) Any party may make a motion for stay of a Commissioner's decision pending a determination on appeal to the State Board of Education or the court, as the case may be. Such motion shall be made subsequent to, or concurrent with, the filing of a notice of appeal with the State Board or the court, but within 30 days of the filing of the Commissioner's decision.

1. A motion shall be filed with the Commissioner together with proof of service on each other party, accompanied by a copy of the notice of appeal and a letter memorandum or brief which addresses the standards to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982) as set forth at N.J.A.C. 6A:3-1.6(b). The motion may be further briefed in accordance with the directives of the Commissioner, and shall be decided by the Commissioner based upon the above-referenced criteria.

(b) Any party may make a motion for reconsideration or clarification of the Commissioner's decision within 10 days of the filing of the Commissioner's decision.

1. A motion shall be filed with the Commissioner together with proof of service on each other party, shall be briefed in accordance with the directives of the Commissioner, and shall be decided by the Commissioner in accordance with applicable rules of the OAL.

2. A motion for reconsideration shall be considered based upon the following:

i. claim(s) of mistake, provided, however, that disagreement with the outcome of a decision, or with the analysis upon which it is based, shall not constitute “mistake” for purposes of this section;

ii. newly discovered evidence likely to alter the outcome of a matter, where such evidence could not have been previously discovered by due diligence;

iii. newly ascertained misrepresentation or other misconduct of an adverse party, where such misrepresentation or misconduct could not have been previously known; or

iv. reversal of a prior judgment on which the present matter is based.

3. A motion for clarification shall be considered based upon necessity as specifically demonstrated in the papers submitted with the motion.

(c) The filing of a motion for clarification or reconsideration shall not, in and of itself, relieve the parties from compliance with any judgment or order of the Commissioner.

(d) The filing of a motion for clarification or reconsideration shall not, in and of itself, alter the filing date of the Commissioner’s decision for purposes of appeal.

(e) All papers filed in conjunction with motions for stay, reconsideration or clarification shall be submitted in original form with two copies.

#### **6A:3-1.16 Relaxing of rules**

The rules in this chapter shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of the Commissioner in connection with, the determination of controversies and disputes under the school laws. Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL, they may be relaxed or dispensed with by the Commissioner, in the Commissioner’s discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

#### **6A:3-1.17 Awarding of interest**

(a) The Commissioner may, pursuant to the criteria of this section, award prejudgment or postjudgment interest in any circumstance in which a petitioner has sought such relief and has successfully established a claim to a monetary award.

1. Any petitioner seeking award of prejudgment interest shall so specify in the petition’s request for relief and shall propose, before the Commissioner or the ALJ, whoever is hearing the case, an interest calculation consistent with (d) below.

2. Any party seeking postjudgment interest shall file a new petition in accordance with N.J.A.C. 6A:3-1.3, addressing the criteria set forth in (c)2 below and proposing an interest calculation consistent with (d) below.

(b) “Interest” is defined as follows:

1. Prejudgment interest is interest awarded for that period of time prior to the adjudication of the monetary claim.

2. Postjudgment interest is interest determined by the Commissioner to be due to a petitioning party for that period of time after the claim has been successfully adjudicated but remains unsatisfied.

(c) The following criteria shall be applied when awarding interest:

1. The Commissioner may award prejudgment interest when the Commissioner has concluded that the denial of the monetary claim was an action taken in bad faith or has been determined to have been taken in deliberate violation of statute or rule.

2. The Commissioner may award postjudgment interest when a respondent has been determined through adjudication to be responsible for such payment, the precise amount of such claim has been established or could have been established and the party responsible for the payment of the judgment has neither applied for nor obtained a stay of the decision but has failed to satisfy the claim within 60 days of its award.

(d) The rate of interest for the awarding of prejudgment and postjudgment interest shall equal the average rate of return, to the nearest one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment in the Department of the Treasury.

## **SUBCHAPTER 2. DECLARATORY RULINGS**

### **6A:3-2.1 Petition for declaratory ruling**

(a) Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the Commissioner for a declaratory ruling with respect to rights, responsibilities and status arising from any statute or rule within the jurisdiction of the Commissioner. The determination to entertain such petitions for declaratory ruling shall be within the sole discretion of the Commissioner. If such request is granted, the matter shall proceed in accordance with these rules as they pertain to petitions. A declaratory ruling shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

1. A request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts which are future, contingent, uncertain or disputed.

(b) Except that the format of the petition shall be as set forth in this subchapter, the rules pertaining to filing, service and answer of petitions as set forth in this chapter shall apply to petitions for declaratory ruling.

### **6A:3-2.2 Format of petition for declaratory ruling**

(a) The format of the petition for declaratory ruling follows:

|         |   |                            |
|---------|---|----------------------------|
|         | : | BEFORE THE COMMISSIONER OF |
|         | : | EDUCATION OF NEW JERSEY    |
| CAPTION | : |                            |
|         | : | PETITION FOR DECLARATORY   |
|         | : | RULING                     |

Petitioner, \_\_\_\_\_, residing at \_\_\_\_\_, hereby requests the Commissioner to render a declaratory ruling concerning the application of (N.J.S.A. 18A:\_\_\_\_, N.J.A.C. 6:\_\_\_\_, N.J.A.C. 6A:\_\_\_\_) to the controversy which has arisen between petitioner and respondent who resides at \_\_\_\_\_

\_\_\_\_\_ by reason of:

1. (Here set forth in as many itemized paragraphs as are necessary the specific allegations, and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner respectfully prays that the Commissioner shall construe the provisions of \_\_\_\_\_ and determine and declare \_\_\_\_\_.

\_\_\_\_\_  
Signature of petitioner or  
representative

Date: \_\_\_\_\_

(Name of petitioner), of full age, being duly sworn upon his or her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.
2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of petitioner

Sworn and subscribed to before me this  
\_\_\_\_\_ day of (month), (year)

\_\_\_\_\_  
(Signature of Notary Public or other person  
authorized to administer an oath or affirmation)

### **6A:3-2.3 Dissemination of declaratory ruling**

The Commissioner shall ensure the dissemination to district boards of education of the result of any declaratory ruling through the county superintendents of schools.

## **SUBCHAPTER 3. ORDER TO SHOW CAUSE**

### **6A:3-3.1 Commissioner's order to show cause**

(a) If in the course of supervising the schools, and following investigation, the Commissioner becomes aware of violation(s) of the school laws in school districts which if true would entitle the Commissioner to impose a sanction on the Commissioner's own initiative, the Commissioner may accord the district board of education or any other party subject to the Commissioner's jurisdiction an opportunity to present its views preliminary to imposing such sanction by issuing an order directing such board or party to show cause why such sanction should not be imposed. A statement of the factual details and investigative findings supporting the charge shall accompany the order. This procedure shall not be deemed to be in lieu of a contested case hearing, and the right to a contested case hearing is independent of, and in addition to, this step.

An order to show cause shall be appropriate in the following circumstances, although it is not to be deemed limited thereto:

1. Ordering alteration or abandonment of a school building (N.J.S.A. 18A:20-36);
2. Withholding State aid for unsuitable facilities (N.J.S.A. 18A:33-2);
3. Withholding salaries of:
  - i. A county superintendent (N.J.S.A. 18A:7-4); and
  - ii. Any teaching staff member (N.J.S.A. 18A:29-4) who neglects or refuses to perform any duty lawfully imposed upon such member until such time as the member complies;
4. Suspending teachers' certificates for wrongful cessation of duties (N.J.S.A. 18A:26-10 and 18A:28-8);
5. Withdrawing approval of a vocational school (N.J.S.A. 18A:54-4), a private school (N.J.S.A. 18A:69-3, 69-5), or a private correspondence school (N.J.S.A. 18A:69-13); and
6. Establishing a State-operated school district (N.J.S.A. 18A:7A-14(e)).

(b) Parties to contested matters shall not submit or request the issuance of orders to show cause seeking enforcement of litigants' rights. Parties seeking enforcement of judgments of the Commissioner shall generally bring an action in the Superior Court as provided in New Jersey Court Rules at R.4:67-6. Such actions as are appropriately brought before the Commissioner due to the need for a further determination on a school law issue in order to resolve the parties' adjudicated rights, are to be initiated by way of a petition conforming to the requirements of N.J.A.C. 6A:3-1.3, accompanied, where appropriate, by a motion for emergent relief with a letter memorandum or brief addressing the standards to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982) as set forth at N.J.A.C. 6A:3-1.6(b).

#### **SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT**

##### **6A:3-4.1 Withholding salary increment**

(a) Where a district board of education acts to withhold a teacher's salary increment based upon teaching performance pursuant to N.J.S.A. 18A:29-14, the teacher may file a petition of appeal according to the procedures outlined in this chapter.

1. Disputes involving the withholding of a teacher's salary increment for predominately disciplinary reasons shall be subject to the grievance procedures established by law in accordance with N.J.S.A. 34:13A-26. Pursuant to N.J.S.A. 34:13A-27, if there is a dispute as to the nature of a withholding, the Public Employment Relations Commission shall determine whether the basis for the withholding is predominately disciplinary.

#### **SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT**

##### **6A:3-5.1 Filing of written charges and certificate of determination**

(a) In a case of charges preferred before the Commissioner against an employee of a district board of education or of a State-operated school district pursuant to the Tenure Employees' Hearing Act, N.J.A.C. 6A:3-1.3 (Filing and service of petition) shall not apply. In place of the usual petition, the district board of education or the State district superintendent shall file the

original and two copies of the written charges and the required certificate of determination with the Commissioner together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as charges are filed with the Commissioner.

1. In accordance with N.J.S.A. 34:13A-24, fines and suspensions imposed as minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S.A. 18A:6-10 where the negotiated agreement between a district board of education and the majority representative of the employees in the appropriate collective bargaining unit provides for such discipline. In these cases, tenure charges shall not be filed in order to impose minor discipline on a person serving under tenure.

(b) In all instances of the filing and certification of tenure charges, other than for reasons of inefficiency, the following procedures and timelines shall be observed:

1. Charges shall be stated with specificity as to the action or behavior underlying the charges and shall be filed in writing with the secretary of the district board of education or with the State district superintendent, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.

2. Charges along with the required sworn statement of evidence shall be transmitted to the affected tenured employee and the employee's representative, if known, within three working days of the date they were filed with the secretary of the district board of education or the State district superintendent. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The affected tenured employee shall have an opportunity to submit to the district board of education or the State district superintendent a written statement of position and a written statement of evidence both of which shall be executed under oath with respect thereto within 15 days of receipt of the tenure charges.

4. Upon receipt of the tenured employee's written statements of position and evidence under oath, or upon expiration of the allotted 15-day time period, the district board of education shall determine by a majority vote of its full membership, or the State district superintendent shall determine, within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary.

5. The district board of education or the State district superintendent shall, within three working days, provide written notification of the determination to the employee against whom the charge has been made, in person or by certified mail to the last known address of the employee and the employee's representative, if known.

6. In the event the district board of education or the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the board or the State district superintendent shall, within 15 days, file such written charges with the Commissioner. The charges shall be stated with specificity as to the action or behavior underlying the charges and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated for administrative purposes will be representing the board or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

7. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(c) In the event that the tenure charges are charges of inefficiency, except in the case of building principals in State-operated school districts, where procedures are governed by the provisions of N.J.S.A. 18A:7A-45 and such rules as may be promulgated to implement it, the following procedures and timelines shall be observed:

1. Initial charges of inefficiency shall be stated with specificity as to the nature of the inefficiency alleged and filed by the appropriate administrator with the secretary of the district board of education or the State district superintendent along with a statement of evidence in support thereof executed under oath. In the event the charges are against the chief school administrator of a district board of education, they shall be filed, along with the required statement of evidence, by a designated board member(s) upon the direction of the district board as ascertained by majority vote of the full board.

2. The district board of education, through its board secretary, or the State district superintendent, upon receipt of the charges of inefficiency and the written statement of evidence in support thereof shall cause a copy of same to be transmitted to the affected employee and the employee's representative, if known, within three working days. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The district board of education, through its board secretary, or the State district superintendent shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal 90 day period, or any longer period provided by the district board of education or State district superintendent, the district board of education or the State district superintendent intends to certify those charges of inefficiency to the Commissioner pursuant to N.J.S.A. 18A:6-11.

4. Concurrent with notifying the employee of such charges of inefficiency, the district board of education or the State district superintendent shall direct that there be a modification of the individual professional improvement plan mandated by N.J.A.C. 6A:32-4.3 or N.J.A.C. 6A:32-4.4, to assure that such plan addresses the specific charges of inefficiency and comports with the timelines established for correction.

5. Upon completion of the minimal 90-day period for improvement, or such longer period as may be provided by the district board of education or the State district superintendent, the administrator(s) responsible for bringing such charges to the attention of the district board of education or the State district superintendent shall notify the district board of education or the State district superintendent in writing of what charges, if any, have not been corrected. In the event the charges are against a chief school administrator of a district board of education, the district board shall determine by majority vote of the full board what charges, if any, have not been corrected.

6. The district board of education or the State district superintendent, upon receipt of the written notification or upon the district board's determination in the case of a chief school administrator, shall notify the affected employee in writing that all of the inefficiencies have been corrected or, in the alternative, which of the inefficiencies have not been corrected. The time from the expiration of the minimal 90-day period, or such longer period as may be provided by the district board of education or the State district superintendent, to the notification of the employee by the district board of education or the State district superintendent shall not exceed 30 calendar days.



7. In the event that certain charges of inefficiency have not been corrected, the affected employee shall have an opportunity to respond within 15 days of the receipt of said notification of inefficiency by filing a statement of evidence under oath in opposition to those charges.

8. Upon receipt of such written statement of evidence under oath or upon expiration of the allotted 15-day time period, the district board of education shall determine by a majority vote of its full membership, or the State district superintendent shall determine, within 45 days, whether there is probable cause to credit the evidence in support of the charges and that such charges, if credited, are sufficient to warrant a dismissal or reduction in salary.

9. In the event the district board of education or the State district superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the district board of education or the State district superintendent shall, within 15 days, file such written charges with the Commissioner. The charge shall be stated with specificity as to the nature of the inefficiency alleged, and shall be accompanied by the required certificate of determination together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

10. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

#### **6A:3-5.2 Format of certificate of determination**

(a) The certificate of determination which accompanies the written charges shall contain a certification by the district board of education secretary or the State district superintendent:

1. That the district board of education or the State district superintendent has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;

2. Of the date, place and time of the meeting at which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay;

3. That such determination was made by a majority vote of the whole number of members of the district board of education or by the State district superintendent in accordance with N.J.S.A. 18A:7A-39; and

4. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

(b) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

#### **6A:3-5.3 Filing and service of answer to written charges**

(a) An individual against whom tenure charges are certified shall have 15 days from the date such charges are filed with the Commissioner to file a written response to the charges. Except as

to time for filing, the answer shall conform to the requirements of N.J.A.C. 6A:3-1.5(a) through (d).

1. Consistent with N.J.A.C. 6A:3-1.5(g), nothing herein precludes the filing of a motion to dismiss in lieu of an answer to the charges, provided that such motion is filed within the time allotted for the filing of an answer. Any papers filed in conjunction with a motion to dismiss shall be submitted in original form with two copies. Briefing on the motions shall be in the manner and within the time fixed by the Commissioner.

(b) Upon written application by the person against whom charges are filed, the Commissioner may extend the time period for the filing of an answer upon a finding of good cause shown consistent with the provisions of N.J.S.A. 18A: 6-16. Such application shall be received prior to the expiration of the 15-day answer period, and a copy shall be served upon the charging district board of education or the State district Superintendent. Such district board of education or State district superintendent shall promptly notify the Commissioner of any opposition to the request.

1. A request for extension which is not filed within the 15-day period allotted for answer to tenure charges will be considered only in the event of demonstrated emergency or other unforeseeable circumstance such that the request could not have been made within the requisite filing period.

(c) Where no answer is filed within the requisite time period and no request for extension is made, or such request is denied by the Commissioner, or where the charged employee submits an answer or other responsive filing indicating that the employee does not contest the charges, the charges shall be deemed admitted by the charged employee.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

#### **6A:3-5.4 Filing and certification of charges against tenured employees in the Departments of Human Services, Corrections and Education and in the Juvenile Justice Commission**

(a) The process for the filing and service of tenure charges against persons serving under tenure pursuant to N.J.S.A. 18A:60-1 within the Departments of Human Services, Corrections and Education, or within the Juvenile Justice Commission pursuant to N.J.S.A. 52:17B-170, other than for reasons of inefficiency shall comport with the process as described in N.J.A.C. 6A:3-5.1(b) except as set forth in this section. The charges shall be filed with the Director of Employee Relations in the Department of Human Services, the Director of the Office of Educational Services in the Department of Corrections, the Director of the Office of Educational Services in the Juvenile Justice Commission, or with an individual within the Department of Education designated by the Commissioner, as appropriate. Any written statement of position submitted by the affected employee in response to said charges shall be filed with those individuals in the respective departments in the manner and time frame prescribed by N.J.A.C. 6A:3-5.1(b).

1. In accordance with N.J.S.A. 34:13A-24, fines and suspensions imposed as minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S.A. 18A:6-10 where the negotiated agreement between an agency and the majority representative of the employees in the appropriate collective bargaining unit provides for such discipline. In these cases, tenure charges shall not be filed in order to impose minor discipline on a person serving under tenure pursuant to N.J.S.A. 18A:60-1.

(b) The Director of Employee Relations in the Department of Human Services, the Director of the Office of Educational Services in the Department of Corrections, the Director of the Office of Educational Services in the Juvenile Justice Commission or individual designated by the Commissioner of Education shall, upon receipt of respondent's written statement of evidence under oath or upon expiration of the allotted 15 day time period, determine within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant dismissal or reduction of salary and shall notify the affected employee of the determination in writing in the manner prescribed by N.J.A.C. 6A:3-5.1(b).

(c) In the event that the Director of Employee Relations in the Department of Human Services, the Director of the Office of Educational Services in the Department of Corrections, the Director of the Office of Educational Services in the Juvenile Justice Commission or the individual designated by the Commissioner of Education finds that probable cause exists and that the charges, if credited, warrant dismissal or reduction in salary, then such person shall file such charges and the required certification with the Commissioner of Education together with the name of the Deputy Attorney General who will be representing the agency and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as charges are filed with the Commissioner.

(d) In the event that the tenure charges are charges of inefficiency, the procedures and timelines to be followed shall be as prescribed by N.J.A.C. 6A:3-5.1(c) except that receipt of all papers, required actions, transmissions, notifications, determinations and certifications prescribed by the aforesaid provision shall be the responsibility of the Director of Employee Relations for charges arising out of the Department of Human Services, the Director of the Office of Educational Services for charges arising out of the Department of Corrections, the Director of the Office of Educational Services for charges arising out of the Juvenile Justice Commission or the individual designated by the Commissioner of Education for charges arising out of the Department of Education.

(e) The certificate of determination which accompanies the written charges shall contain a certification by the Director of Employee Relations in the Department of Human Services, the Director of the Office of Educational Services in the Department of Corrections, the Director of the Office of Educational Services in the Juvenile Justice Commission or the individual designated by the Commissioner of Education:

1. That the director or responsible person has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;

2. Of the date on which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay; and

3. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

(f) An individual against whom tenure charges are certified shall have 15 days from the date such charges are filed with the Commissioner to file a written response to the charges with the Commissioner consistent with the provisions of N.J.A.C. 6A:3-5.3(a).

(g) Upon written application by the person against whom charges are filed, the Commissioner may extend the time period for the filing of an answer upon a finding of good cause shown

consistent with the provisions of N.J.S.A. 18A: 6-16. Such application shall be received prior to the expiration of the 15-day answer period, and a copy shall be served upon the charging department, which shall promptly notify the Commissioner of its opposition, if any, to the request.

1. A request for extension which is not filed within the 15-day period allotted for answer to tenure charges shall be considered only in the event of demonstrated emergency or other unforeseeable circumstance such that the request could not have been made within the requisite filing period.

(h) Where no answer is filed within the requisite time period and no request for extension is made, or such request is denied by the Commissioner, or where the charged employee submits an answer or other responsive filing indicating that the employee does not contest the charges, the charges shall be deemed admitted by the charged employee.

### **6A:3-5.5 Determination of sufficiency and transmittal for hearing**

(a) Within 15 days of receipt of the charged party's answer or expiration of the time for its filing, the Commissioner shall determine whether such charge(s) are sufficient, if true, to warrant dismissal or reduction in salary. Where the charges are determined insufficient, they shall be dismissed and the parties shall be notified accordingly. Where the charges are determined sufficient, the matter shall, within 10 days of such determination, be transmitted to the OAL for further proceedings, unless the Commissioner retains the matter pursuant to N.J.A.C. 6A:3-1.11 or 6A:3-1.12.

1. A notice of transmittal shall be issued to the parties by the Department of Education on the same date as the matter is transmitted to the OAL.

(b) Where a party to a tenure matter so requests, the Commissioner may agree to hold the matter in abeyance at any time prior to transmittal to the OAL. Thereafter, requests to hold the matter in abeyance shall be directed to the OAL Clerk or the ALJ in accordance with the rules of the OAL. Any request for abeyance, whether directed to the Commissioner or the OAL, shall be consistent with the intent of N.J.S.A. 18A:6-16 as amended by P.L. 1998, c. 42.

### **6A:3-5.6 Withdrawal, settlement or mooted of tenure charges**

(a) Once tenure charges are certified to the Commissioner, such charges may be withdrawn or settled only with the Commissioner's approval. Any proposed withdrawal or settlement, whether submitted to the Commissioner or to the ALJ, shall address the following standards established by the State Board of Education in the matter entitled *In re Cardonick*, State Board decision of April 6, 1983 (1990 *School Law Decisions (S.L.D.)* 842, 846):

1. Accompaniment by documentation as to the nature of the charges;
2. Explication of the circumstances justifying settlement or withdrawal;
3. Consent of both the charged and charging parties;
4. Indication that the charged party entered into the agreement with a full understanding of his or her rights;
5. A showing that the agreement is in the public interest; and
6. Where the charged party is a teaching staff member, a showing that the teaching staff member has been advised of the Commissioner's duty to refer tenure determinations resulting in

loss of position to the State Board of Examiners for possible suspension or revocation of certificate.

(b) A settlement agreement shall not propose terms that would restrict access to information or records deemed public by law or result in misrepresentation of the reason for an employee's separation from service. Where tenure charges have been certified to the Commissioner by a district board of education, any proposed settlement shall indicate, by signature of the board attorney or inclusion of a district board of education resolution authorizing settlement, that the district board of education has consented to the terms of the settlement.

(c) A proposed withdrawal or settlement of tenure charges shall be submitted to the Commissioner prior to transmittal of such charges to the OAL; thereafter, it shall be submitted to the ALJ in accordance with applicable rules of the OAL.

(d) Where tenure proceedings are concluded prior to adjudication because the charged party has unilaterally resigned or retired, the Commissioner may refer the matter to the State Board of Examiners for action against the charged party's certificate as it deems appropriate, when such referral is warranted under the provisions governing resignation or retirement prior to conclusion of tenure charges as set forth in N.J.A.C. 6A:9-17.4.

(e) Where a proposed settlement requires the tenured employee to relinquish a certificate issued by the State Board of Examiners, upon approval of the settlement agreement, the Commissioner shall forward the matter to the State Board of Examiners for proceedings in accordance with N.J.A.C. 6A:9-17.11.

## **SUBCHAPTER 6. TERMINATION OR ALTERATION OF SENDING-RECEIVING RELATIONSHIP**

### **6A:3-6.1 Application for termination or change in allocation or apportionment**

(a) An application for change of designation of a high school (termination or severance of relationship) or of allocation or apportionment of students pursuant to N.J.S.A. 18A:38-13 shall be made by petition of appeal, accompanied by the required feasibility study, and shall proceed in accordance with the provisions of this chapter except as set forth below.

(b) Where an application for change is unanswered within the requisite filing period, or is answered by a filing or filings indicating that each respondent does not oppose the application, the Commissioner shall so notify the petitioning district board of education and each respondent district board of education. At the next public meeting of each district board of education following notice from the Commissioner, each district board of education shall announce that the record before the Commissioner shall remain open for a period of 20 days from the date of the announcement in order that interested persons or entities may submit written comments to the Commissioner. Such announcement shall indicate the manner in which, and the address to which, comments may be submitted to the Commissioner as set forth in N.J.A.C. 6A:3-1.2 and 6A:3-1.3, and shall further indicate the nature and purpose of such comments as set forth in (c) below.

1. Each district board of education shall, within 10 days of the date of the announcement, submit to the Commissioner a certification indicating the date the announcement was made and the content of the announcement.

(c) Comments submitted pursuant to (b) above shall not exceed 10 pages in length, shall be submitted to the Commissioner in duplicate, shall be served on all parties to the case, shall

include proof of such service when filed with the Commissioner, and shall specifically address the following statutory standard for the Commissioner's review of applications for change in designation, allocation or apportionment:

1. Comments shall address the question of whether the proposed change in designation, allocation or apportionment will result in a substantial negative impact in any of the affected districts in one or more of the following areas: educational and financial implications; quality of education received by students; and racial composition of the student populations.

(d) Each party to the application for change shall have 20 days to reply to any comments at the close of the designated comment period. Any reply shall be served on all other parties to the application.

(e) If the Commissioner determines, upon review of the record at the close of the period established for submission of comments and replies, that further inquiry, fact-finding or exploration of legal argument is necessary in order to decide the matter consistent with the standard of statute, the Commissioner shall direct such further proceedings as the Commissioner deems necessary.

## **SUBCHAPTER 7. APPEALS FROM DECISIONS OF THE NEW JERSEY STATE INTERSCHOLASTIC ATHLETIC ASSOCIATION (NJSIAA)**

### **6A:3-7.1 Filing and service of petition**

(a) To initiate an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) before the Commissioner, a petitioner shall prepare and serve a verified petition in the same form and manner as prescribed by this chapter, except as set forth below.

1. The petitioner shall include with the petition a copy of the final NJSIAA decision from which appeal is being taken.

2. The petitioner shall include with the petition the Record on Appeal obtained from the NJSIAA, including a Statement of Items comprising such record, or a certification attesting that such record and statement have been requested and will be provided to the Commissioner within ten (10) days, unless a different time frame is directed by the Commissioner.

i. The record on appeal shall consist of all relevant papers on file with the NJSIAA, including all exhibits considered by the involved NJSIAA committees and the stenographic transcript of any such committee hearings. Disputes about the content of the record shall be determined by the Commissioner prior to the establishing of a briefing schedule pursuant to N.J.A.C. 6A:3-7.3.

3. The petitioner shall include a certification stating that the petitioner has exhausted the internal appeal procedures of the NJSIAA set forth in the NJSIAA constitution, bylaws and rules and regulations as adopted by member schools pursuant to N.J.S.A. 18A:11-3, and that the decision appealed from is a final determination of the NJSIAA.

(b) The Commissioner shall summarily dismiss any petition filed prior to exhaustion of internal NJSIAA appeal procedures.

1. Where a petition challenges a rule of the NJSIAA or a determination of the NJSIAA that has not been reached through a quasi-judicial process including evidentiary hearing, and where the NJSIAA constitution, bylaws and rules and regulations adopted pursuant to N.J.S.A.

18A:11-3 do not provide for an applicable internal hearing process, the Commissioner shall decline to hear the matter on appeal until a hearing before the NJSIAA has been conducted in accordance with procedures agreed upon by the NJSIAA and the petitioner.

(c) The Commissioner shall summarily dismiss any petition seeking to appeal a determination of the NJSIAA in an area that is expressly designated as not appealable by the NJSIAA constitution, bylaws or rules and regulations as adopted by member schools pursuant to law.

(d) Upon filing of a petition, the appeal shall not proceed in accordance with the general provisions of this chapter, but shall instead proceed as set forth in this subchapter.

### **6A:3-7.2 Answer; record on appeal**

(a) Within 10 days of its receipt of a verified petition, the NJSIAA and any other respondent shall file an answer to the petition in the same form and manner as prescribed by N.J.A.C. 6A:3-1.5.

(b) Any appeal from a decision of the NJSIAA shall be based exclusively on the record established in the internal proceedings before the NJSIAA, as specified in the Statement of Items Comprising the Record on Appeal or as determined by the Commissioner in the event of a dispute. Supplementation of the record shall not be permitted except as directed by the Commissioner.

### **6A:3-7.3 Schedule of briefing**

(a) Within 10 days from the filing of the respondent(s)' answer(s), the petitioner shall file a brief setting forth the argument for its petition, together with proof of service upon the NJSIAA and any other respondent.

(b) The NJSIAA and any other respondent shall file briefs in opposition within 10 days of the receipt of the petitioner's brief, together with proof of service upon the petitioner(s).

(c) After the filing of briefs pursuant to (b) above, no further briefs shall be allowed except as directed by the Commissioner and the record of the matter shall be deemed closed.

(d) Nothing in this section shall preclude the Commissioner from adjusting the requirements of (a) and (b) above when the Commissioner's ability to render a timely decision would not be compromised by granting a party's request for additional time within which to make required submissions.

### **6A:3-7.4 Applications for emergent relief**

(a) Where a petitioner is seeking emergent relief, a petition shall be filed in accordance with N.J.A.C. 6A:3-7.1, except as set forth below, and shall be accompanied by a separate motion and brief meeting the requirements of N.J.A.C. 6A:3-1.6.

1. The petitioner shall include with the petition the Record on Appeal obtained from the NJSIAA, including a Statement of Items comprising such record, or a certification attesting that such record and statement have been requested and will be provided to the Commissioner within three (3) days, unless a shorter time frame is directed by the Commissioner due to a matter's extreme urgency or a longer time frame is agreed upon by the parties and the Commissioner.

2. Where the relief sought in the petition will become moot upon the Commissioner's decision on the motion for emergent relief, petitioner's brief shall additionally address the merits of the petition so that the Commissioner's decision on the emergent application shall resolve the entire controversy without further proceedings.

(b) Within three (3) days of its receipt of a verified petition with motion for emergent relief, or within such shorter period as may be directed by the Commissioner due to a matter's extreme urgency, the NJSIAA and any other respondent shall file an answer to the petition in the same form and manner as prescribed by N.J.A.C. 6A:3-1.5, together with a brief in opposition to petitioner's submission pursuant to subsection (a) above and proof of service upon the petitioner(s).

(c) After the filing of briefs pursuant to (a) and (b) above, no further briefs shall be allowed except as directed by the Commissioner and the record of the matter shall be deemed closed.

### **6A:3-7.5 Standard of review**

(a) In determining appeals from NJSIAA decisions, the Commissioner's scope of review shall be appellate in nature.

1. If the NJSIAA has granted a petitioner due process and its decision is supported by sufficient credible evidence in the record as a whole, the Commissioner shall not substitute his or her judgment for that of the NJSIAA, even if the Commissioner might judge otherwise in a *de novo* review.

2. The Commissioner shall not overturn NJSIAA's application of its own rules absent a demonstration by the petitioner that such rules were applied in an arbitrary, capricious, or unreasonable manner.

### **6A:3-7.6 Commissioner's decision**

The Commissioner shall issue a written decision which shall resolve the entire controversy before the Commissioner. The decision shall constitute, pursuant to N.J.S.A. 18A:11-3, the final decision of the State administrative agency for purposes of appeal to the Appellate Division of the Superior Court.

## **SUBCHAPTER 8. APPEALS FROM DISTRICT BOARD OF EDUCATION DETERMINATIONS OF ENTITLEMENT TO ATTEND SCHOOL BASED UPON DOMICILE OR RESIDENCY IN DISTRICT**

### **6A:3-8.1 Exceptions to general appeal requirements**

(a) Appeals of district board of education determinations with respect to entitlement to attend school pursuant to N.J.S.A. 18A:38-1 shall generally proceed in accordance with the provisions of this chapter, except as set forth below.

1. Petitions in letter form will be accepted from pro se petitioners, provided that such petitioners:

- i. Identify themselves by name, address, and telephone number where available;
- ii. Identify the respondent district board of education;



iii. Clearly indicate that they are appealing from a determination of ineligibility to attend school in the district based upon residency or domicile and provide the date on which such determination was made; and

iv. Include a signed attestation, which need not be notarized, that their claim of entitlement is based upon facts which are true to the best of their knowledge and belief.

2. Appeals from pro se petitioners need not be submitted in triplicate or served on the respondent district board of education, but may instead be filed directly with the Bureau of Controversies and Disputes. Upon the receipt of any such appeal, the Bureau will transmit by facsimile a copy of the petition to the district board of education, together with notice of the district board of education's obligation to answer the petition pursuant to N.J.A.C. 6A:3-1.5 and to effectuate, pursuant to N.J.S.A. 18A:38-1, the attendance of petitioners' child(ren) pending the outcome of the appeal.

i. Nothing herein shall preclude a pro se petitioner from serving a petition on a respondent district board of education in accordance with N.J.A.C. 6A:3-1.3. In such cases, the district board of education's obligation to answer the petition pursuant to N.J.A.C. 6A:3-1.5 and to effectuate, pursuant to N.J.S.A. 18A:38-1, the attendance of petitioner's child(ren) pending the outcome of the appeal, shall commence on receipt of the petition, rather than on any subsequent notice from the Bureau.

3. In any instance where a petitioner has not included a copy of the district board of education's written determination of ineligibility as part of the petition, the district board of education shall file a copy of such determination with its answer.

(b) Where appeal is taken from a determination of ineligibility under N.J.S.A. 18A:38-1(b)1 ("affidavit" students), such appeal shall be filed by the resident making the claim of entitlement and shall not be filed by the parent or legal guardian.

(c) Hearing of appeals filed pursuant to this subchapter shall be on an expedited basis in accordance with the provisions of N.J.S.A. 18A:38-1.

(d) Nothing in this section shall preclude a district board of education from seeking payment of tuition, consistent with the provisions of N.J.A.C. 6A:22-6, for a student it determines to be ineligible to attend school in the district.

1. Where a person claiming entitlement to attend school in the district has filed an appeal with the Commissioner but withdraws or otherwise abandons the appeal prior to its adjudication on the merits, upon the Commissioner's finding that the appeal has been so withdrawn or abandoned, the district board of education may remove the student from school and seek tuition for the period of ineligible attendance; provided, however, that where a counterclaim has been filed by the district board of education, and the record includes the rate(s) of tuition for the year(s) at issue, the per diem rate of tuition for the current year, and the date on which the student's ineligible attendance began, the Commissioner may order payment of tuition, consistent with the provisions of N.J.A.C. 6A:22-6, in his decision on withdrawal or abandonment of the appeal.

(e) The provisions of this subchapter shall not apply to disputes arising from a district board of education's assignment of a student to a particular school within the district or to appeals of district board of education determinations not to permit continued attendance by a student who was, but no longer is, eligible to attend school in the district. Such disputes shall be filed, and proceed, in accordance with the general provisions of N.J.A.C. 6A:3-1.

## **SUBCHAPTER 9. REVIEW OF PENALTY RECOMMENDATIONS OF THE SCHOOL ETHICS COMMISSION**

### **6A:3-9.1 Commissioner review of penalty recommendations**

(a) The Commissioner shall review penalty recommendations of the School Ethics Commission pursuant to N.J.S.A. 18A:12-29(c). Such review shall be limited to the appropriateness of the penalty recommended by the Commission in light of its findings of fact and determinations of violation, which are not reviewable by the Commissioner, and shall proceed in accordance with the requirements of the OAL, as set forth in N.J.A.C. 1:6C.

## **SUBCHAPTER 10. “ABBOTT” APPEALS**

### **6A:3-10.1 Appeal of Department determinations**

Appeals of Department determinations shall be made pursuant to the provisions of applicable rules or directives of the court and shall proceed in accordance with the provisions of N.J.A.C. 6A:3-1, except as otherwise required by such rules or directives.

## **SUBCHAPTER 11. APPLICATIONS FOR ISSUANCE OF FACILITIES BONDS**

### **6A:3-11.1 Application to issue bonds following defeated referenda**

Applications for an order of the Commissioner authorizing the issuance of bonds without voter approval pursuant to N.J.S.A. 18A:7G-12 may be made, and shall proceed, in accordance with the provisions of N.J.A.C. 6A:26-3.7(i).